

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TERRY F. CRAMER and JUDY CRAMER,

Plaintiffs-Appellees,

v

DALTON ROOFING SERVICE, INC.,

Defendant-Appellant.

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UNPUBLISHED

October 26, 2004

No. 248559

Ingham Circuit Court

LC No. 01-094717-NO

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

In this negligence action, defendant Dalton Roofing Service, Inc., appeals by leave granted from an order denying its motion for summary disposition, which was based on Dalton Roofing's assertion that it owed no duty to plaintiffs Terry and Judy Cramer for injuries Terry Cramer suffered in a building on which Dalton Roofing was working. We reverse. We decide this appeal without oral argument pursuant to MCR 7.214(E).

**I. Basic Facts And Procedural History**

On July 5, 2000, Dalton Roofing was re-roofing a building owned by Martin Commercial Property and occupied by Wallace Opticians. During this work, patrons of Wallace Opticians could hear the sound of people walking and hammering on the roof, and could feel vibrations. At some point, the Cramers heard a thump, and a small pane of glass fell from an overhead chandelier and struck Terry Cramer, who was sitting in the lobby of Wallace Opticians. Cramer leaped out of his chair and injured his back, suffering a herniated disc that eventually required surgery.

The Cramers sued, claiming that the vibrations from Dalton Roofing's work caused the piece of glass to become dislodged, which in turn caused Terry Cramer's injury. Dalton Roofing moved for summary disposition, arguing that the Cramers failed to establish that it owed them a duty. The trial court denied the motion, noting that the building and the light fixture had been there for years, but that nothing had fallen until Dalton Roofing began working without regard to the fact that the building was occupied.

## II. Summary Disposition

### A. Standard Of Review

We review de novo the trial court's decision on a motion for summary disposition.<sup>1</sup>

### B. The Duty Element Of A Prima Facie Negligence Case

"The threshold question in a negligence action is whether the defendant owed a duty to the plaintiff."<sup>2</sup> In asserting that Dalton Roofing owed the Cramers a duty, the Cramers appear to rely on "application of the basic rule of common law, which imposes an obligation to use due care or to act so as to not unreasonably endanger the person or property of others."<sup>3</sup> In *Terry v Detroit*,<sup>4</sup> the Court stated:

In determining whether a duty exists, courts look to different variables, including the (1) foreseeability of the harm, (2) degree of certainty of injury, (3) existence of a relationship between the parties involved, (4) closeness of connection between the conduct and injury, (5) moral blame attached to the conduct, (6) policy of preventing future harm, and (7) the burdens and consequences of imposing a duty and the resulting liability for breach. [*Buczkowski v McKay*, 441 Mich 96, 101; 490 NW2d 330 (1992)], citing Prosser & Keeton, Torts (5th ed), § 53, p 359, n 24; . . . . The mere fact that an event may be foreseeable is insufficient to impose a duty upon the defendant. *Buczkowski*, *supra* at 101. As the Court in *Buczkowski* explained:

Duty is actually a "question of whether the defendant is under any obligation for the benefit of the particular plaintiff" and concerns 'the problem of the relation between individuals which imposes upon one a legal obligation for the benefit of the other.'" "'Duty' is not sacrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection."<sup>[5]</sup>

"Whether a duty exists to protect a person from a reasonably foreseeable harm is a question of law for the court."<sup>6</sup>

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<sup>1</sup> *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

<sup>2</sup> *Fultz v Union-Commerce Associates*, 470 Mich 460; 683 NW2d 587 (2004).

<sup>3</sup> *Hampton v Waste Mgt of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

<sup>4</sup> *Terry v Detroit*, 226 Mich App 418, 425; 573 NW2d 348 (1997).

<sup>5</sup> *Id.* at 100-101 (citations omitted).

<sup>6</sup> *Maiden*, *supra* at 131.

The Cramers have not identified any aspect of the roofing activity that was performed negligently. Rather, the Cramers argue that it was reasonably foreseeable that people would be in the building and that Dalton Roofing's activities "could shake fixtures loose." Thus, the crux of their position appears to be that Dalton Roofing had a duty to wait until the building was unoccupied before proceeding with its work, not that it negligently performed the work.

Although it is not unreasonable to assume that vibrations from roofing activities might cause some property damage, in our view, the foreseeability of personal injury is minimal at best. That is certainly so in this case, where Dalton Roofing's activities did not, in fact, shake a fixture loose, although it may have caused a piece of the fixture to detach. Indeed, it was not the detached piece itself that allegedly caused Terry Cramer's injury, but rather his reaction to it, making his injury even less foreseeable. Given that an occupant's personal injury is not a reasonably foreseeable result of re-roofing a building, we are unwilling to impose a duty to refrain from doing so if the building is occupied. Because the Cramers have presented no viable theory under which Dalton Roofing owed them a duty, we conclude that the trial court erred in denying Dalton Roofing's motion for summary disposition.

Reversed and remanded for entry of an order granting summary disposition to Dalton Roofing. We do not retain jurisdiction.

/s/ William C. Whitbeck  
/s/ Kathleen Jansen  
/s/ Richard A. Bandstra